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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

WEALTH TAX REFERENCE No 21 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA. and
MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? Yes

J

2. To be referred to the Reporter or not? Yes

3. Whether Their Lordships wish to see the fair copy
of the judgement? No

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?

No

COMMISSIONER OF WEALTH TAX

Versus

MOHINIBAI KANAIYALAL

Appearance:

MR BB NAIK for MR MANISH R BHATT for Petitioner

NOTICE SERVED BY DS for Respondent No. 1

CORAM : MR.JUSTICE R.BALIA. and

MR.JUSTICE A.R.DAVE

Date of decision: 15/12/98

ORAL JUDGEMENT (per R. Balia, J.)

The Income Tax Appellate Tribunal, Ahmedabad
Bench 'A', has referred the following question of law

arising out of its appellate order in WTA No. 671/Ahd/80 for the A.Y. 1975-76 dated 30.5.1981. Though the order by itself does not record more than referring to the decision in WTA Nos. 274, 275 & 276/Ahd/80, the order made in those wealth tax applications have been made part of the statement of the case.

"Whether, on the facts and in the circumstances of the case, the Appellate Tribunal has been right in law in holding that the assessee is entitled to deduction under section 5(1)(xxxii) of the W.T. Act, 1957 in respect of capital employed with M/s. Goklesh Silk Industries and as such the total wealth should be reduced by Rs. 81,815/- as claimed?"

2. The facts and circumstances in which this question had arisen are that the assessee is a partner in M/s. Goklesh Silk Industries. The business activities of the said firm is to purchase grey cloth, its conversion to cloth through outside agencies and sale of the finished products. The assessee in her wealth tax assessment proceedings claimed her share in the firm M/s. Goklesh Silk Industries exempt u/s 5(1)(xxxii) on the ground that the firm is an industrial undertaking of which assessee is a partner and the value of assessee's share in the assets of the said firm are exempt u/s 5(1)(xxxii), which reads as under:-

"The value, as determined in the prescribed manner, of the interest of the assessee in the assets (not being any land or building or any rights in any land or building or any asset referred to in any other clause of this sub-section) forming part of an industrial undertaking belonging to a firm or an association of persons of which the assessee is a partner or, as the case may be, a member."

The word 'industrial undertaking', for the purposes of clauses (xxxa), (xxxi), (xxxii) and (xxxiv) of Sec. 5(1)(xxxi), has been defined in Explanation to Sec. 5(1)(xxxi) which reads as under:-

"For the purposes of cl. (xxxa), this clause, clause (xxxii) and clause (xxxiv), the term 'industrial undertaking' means an undertaking engaged in the business of generation or distribution of electricity or any other form of power or in the construction of ships or in the manufacture or processing of goods or in mining."

3. A plain reading of explanation suggests that in order that assessee's share in the value of assets forming part of an industrial undertaking belonging to a firm can be exempt from inclusion in his taxable wealth, the pre-requirement is that the firm must be engaged in the business of (i) generation of electricity or any other form of power, or distribution of electricity or any other form of power, or (2) construction of ships, or (3) manufacture of goods, (4) or processing of goods or (5) in mining. As the assessee's claim is to the firm being engaged in the processing of grey cloth into cloth ready for sale, we are to examine whether the assessee satisfies the condition of being a partner in the firm which is engaged in the business of processing cloth.

4. As we have noticed, the finding is that the assessee has got grey cloth converted into cloth through outside agency. It is not the case that outside agency which was processing the grey cloth was working directly under the supervision or control of the firm, in respect of whose assets assessee claims exemption, nor is it the case that the processing was done by the labour employed by the assessee for that purpose for his own though not at the factory premises of the firm. Nor it is a case that the processing of the cloth by that outside agency was in any way connected with the carrying on of the business by the assessee as such. Can such an act of processing by third agency help reaching a finding that a firm selling the end product in the market without any involvement of the firm in any part of processing is a firm engaged in the business of processing goods ?

5. Our conclusion, on a plain reading of the provision, is in the negative. What is required of an industrial undertaking belonging to a firm or an association of persons of which the assessee is a partner is that the firm or an association of persons must be engaged in the business of manufacture of goods or processing of goods. It do suggest that whether it is a manufacturing activity or processing activity in some way there must be direct involvement of such firm or associaion of person in the manufacturing activity or the processing activity applied to the goods. We may notice that though the definition is of an industrial undertaking but no definition has been given of the words 'manufacture' or 'processing'. According to the ordinary dictionary meaning, the term 'manufacture' means a process which results in an alteration or change in the goods which are subjected to the process of manufacturing leading to the production of a commercially new article.

In contrast to this, the activity contemplated by the word 'process' in its ordinary meaning means anything done requiring only continuous and regular action or succession of actions leading to the accomplishment of some result but one of the requirements is that the activity should involve some operation on some material for conversion into some other stuff. What is necessary in order to characterise an operation as processing is that the commodity must, as a result of the operation, experience any change. With this requirement of an activity of manufacture or process in mind, if one considers the further requirement that a person in order to take benefit of sec. 5(1)(xxxii), by pointing out that certain assets belong to an industrial undertaking, the requirement is, it must be engaged into the business of manufacture or processing of goods, that is to say, it must be engaged in carrying out such activity which resulted in bringing out new product or engaged in carrying out such activity by which the goods, have experienced some change. If the firm or association of persons is not carrying out any such activity of manufacturing of the goods or processing of the goods, it cannot be said that it is carrying on the business of processing or manufacturing of goods.

6. It may not be necessary that the manufacturing activity or the processing activity is carried on by the assessee or the firm or association of persons personally. It is only if activity of processing or manufacturing is carried on under its supervision and control or by employing its own labour but certainly it cannot include where such manufacturing activity or processing activity is carried on by an independent person as its own business and the person who is engaged in selling of the end product is only concerned with paying the processing charges or manufacturing charges and then sell the goods. By paying the price of raw material and manufacturing or processing charges separately, it cannot be said that the person concerned is engaged in the business of carrying on the processing or manufacturing of goods. If that be so, it will be sufficient that goods sold by a person is manufactured or processed as per specific order and nothing more will be required.

7. The tribunal has relied on, for the purpose of upholding the contention of the assessee, on a decision of the Allahabad High Court in Commissioner of Wealth-tax, Agra v. Mubarakali Khan, 123 ITR 101. We are unable to find any support from that decision for the

conclusion to which the tribunal has reached. It was a case where the assessee was engaged in the business of manufacture and sale of bidis. The court found that the method of manufacture of bidis involved the following process. The firms purchased tendu leaves and tobacco and these were given to local contractors for getting the bidis manufactured. The labourers cut the useless portion of tendu leaves from all sides and then cut the leaves to small pieces of required size. These pieces were then rolled in the shape of bidis. Tobacco was filled and the top portion was closed and the bidis were tied up with a thread. The bidis were then brought to the factory of the firms and were heated for a short time. They were then packed in bundles of 25 each, wrapped in specially designed paper bearing trade mark and label of the firms. Therefore, from the tendu leaves and the tobacco, a new and different article viz. the bidis emerge as a result of various processes to which the tendu leave and the tobacco were subjected. It may be noticed that not the entire activity of manufacture and the processing before the goods were ready for marketing was carried out by third agency. Some part of the processing of the bidis was carried on within the factory of firm of which the assessee was a partner, viz. heating of the bidis which ultimately made it marketable.

8. In this connection, we may refer to the view expressed by Madras High Court as well. In Commissioner of Income-tax v. Commercial Laws of India Pvt.Ltd., 107 ITR 822, the question arose whether the assessee company, which was engaged in the business of printing and publication of a fortnightly journal "Sales Tax Cases", which did not own its own printing press, can be considered to be an industrial company engaged in the manufacture and processing of books. The facts found in that case were that the assessee company entrusted the printing of the journal to another concern and on receipt of the printed sheets, engaged labour contractors, who folded and stitched the printed sheets and thereafter packed and despatched the parts to the subscribers. The case which had arisen u/s 2(6)(d) of the Finance Act, 1968 giving benefit to industrial company which is manufacturing or processing of goods held that it is enough if the assessee, in order to get the benefit of the lower rate of tax, is engaged in the "processing" of goods. Though the printing of the sheets were done by a different concern and therefore there was no question of the assessee carrying on any "manufacture", the folding and stitching of the printed sheets would constitute "processing of goods" so as to fall within the scope of sec. 2(6)(d) and, as the assessee was engaged in such

"processing", it would be liable to pay income-tax only as an "industrial company".

9. Addl. Commissioner of Income-tax, West Bengal-III v. A. Mukherjee and Co. (P.) Ltd., 113 ITR 718, was again a case of a publisher and printer of books. The assessee which was a publisher of books established the facts that it was to get the manuscript for publication, hit upon a suitable format for the book, get it printed as per its requirements under its supervision, get the book bound after suitable changes and then put out the publication for sale. In all these activities the assessee had to play an active role by coordinating its activities in a business-like manner. All these activities dovetailed into one another and the stage from the acquisition of the manuscript right up to the publication was one integrated activity which tantamounted to a manufacturing or processing activity. The assessee did not own a printing press was not found to be a relevant consideration. The Court held that the assessee was engaged in the business of manufacturing or processing if some of the activity was carried on by the assessee or the entire activity is carried on under the supervision and control of the assessee who was responsible for carrying on the entire process which was one integrated whole. The direct involvement of assessee in the process of manufacturing was held to be an essential part and not the personal involvement or actual owning of the machines.

10. In Commissioner of Wealth-tax v. Smt. Premlatabai, 137 ITR 329, which had arisen u/s 5(1)(xxxi) of the Wealth-tax Act to which the Explanation in question is attached, the court had opined that the Explanation nowhere lays down that the undertaking to be treated as "industrial undertaking", should itself carry out the entire processing of goods. If part of the processing is carried out by some other agency, the undertaking will not cease to be an "industrial undertaking" so long as it is engaged in the business of processing of goods. Thus, it was a case where at least part of the processing was carried directly by the assessee under its control and supervision though part of it was carried on by an outside agency. But it was also a case where at least, to some extent, direct involvement of the assessee was found to be necessary. It was a case of a ginning factory.

11. In Commissioner of Wealth-tax, Tamil Nadu-II v. K. Lakshmi, 142 ITR 656 a Bench of Madras High Court, considering the very same provision with which we are

concerned, held that,

the words "engaged in the manufacture" in the said Explanaton postulates the assessee's direct involvement in the manufacture. However, it may not be necessary that the assessee should be personally engaged in the manufacture, but it is sufficient if he employs his own labourers. In cases where the assessee gets the goods manufactured by an outside agency, he cannot be said to manufacture the goods, merely because the assessee pays for the manufacture of feeds the expenses incurred in the manufacture. In respect of "processing" it will not be correct to state that all the processes resulting in the end manufacture must be carried out by the assessee himself. Accordingly, if the assessee has done some process which ultimately has brought about the end product, such an assessee will be entitled to the benefit of the exemption."

In our opinion, this postulates the correct state of law with which we are in respectful agreement.

12. Commissioner of Wealth-tax v. V.O. Angadi Veeriah Chettiar, 167 ITR 341, the facts of which are more close to the case at hand, may be noticed. In the said case, the assessee was a partner in two firms, O and A. The firm O purchased grey yarn and got it bleached for charges by the other firm A. The claim of the assessee for exemption under sec. 5(1)(xxxii) of the Wealth-tax Act in respect of his interest in the two firms was disallowed by the ITO but accepted by the AAC and the Tribunal. The court held that on the findings recorded by the tribunal that the bleaching process is undertaken only by the firm A and the other firm O only got the grey yarn purchased by it bleached by the said firm A, the interest of the assessee in the assets of the firm O will not be entitled to exemption under sec. 5(1)(xxxii), but the assessee will be entitled to the exemption in respect of his interest in the assets of the other firm A.

13. Thus principle of law are settled by a catena of decision of various High Courts, none of which has opined contrary to what we have stated earlier. If we look at the facts found by the revenue authorities, it goes to show that no direct involvement of the assessee with any processing act has been found to exist. In that view of the matter, the assessee cannot be said to have interest in a firm which is engaged in the business of manufacture

of goods or processing of goods and therefore he is not entitled to claim benefit of exemption u/s 5(1)(xxxii), in respect of her share in the value of its assets.

14. Accordingly, we answer the question referred to us in negative, that is to say, in favour of the revenue and against the assessee. The assessee has not appeared in spite of service. No order as to costs.

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